

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DOUGLAS HANDSHOE	§ § § § § § §	PLAINTIFF
v.		Civil No. 1:15cv382-HSO-JCG
VAUGHN PERRET, <i>et al.</i>		DEFENDANTS

**ORDER SETTING JANUARY 4, 2019, DEADLINE FOR PLAINTIFF
DOUGLAS HANDSHOE TO SEEK DEFAULT JUDGMENT
AS TO DEFENDANTS PROGRESS MEDIA GROUP LIMITED
OF NOVA SCOTIA AND MARILYN SMULDERS**

This matter is before the Court sua sponte for case management purposes. After due consideration of the record and relevant legal authority, the Court will direct Plaintiff Douglas Handshoe (“Plaintiff” or “Handshoe”) to either seek a default judgment as to Defendants Progress Media Group Limited of Nova Scotia and Marilyn Smulders, or dismiss his claims against these Defendants, no later than January 4, 2019. If Plaintiff fails to do either by that date, the Court may dismiss Plaintiff’s claims against Progress Media Group Limited of Nova Scotia and Marilyn Smulders without prejudice, without further notice to Plaintiff.

I. BACKGROUND

This matter has been pending for over three years and is set for trial on the Court’s February 2019 trial calendar. The pretrial conference is scheduled for January 24, 2019, at 10:30 a.m. The only claims remaining for trial are

Defendant/Counterclaimant Charles Leary's Counterclaims [233] against Plaintiff/Counter-Defendant Douglas Handshoe for (1) malicious prosecution; (2) misrepresentation under 17 U.S.C. § 512(f), related to the "late January, 2016," counter-notification sent to Amazon Web Services; and (3) copyright infringement. *See* Order [305] at 14-15.

Handshoe's only remaining claim is one contained in Count 3 of the Third Amended Complaint against Defendants Progress Media Group Limited of Nova Scotia and Marilyn Smulders for alleged misrepresentation under 17 U.S.C. § 512(f). *See* 3d Am. Compl. [90] at 36-38. Both Progress Media and Smulders are in default. *See* Clerk's Entry of Default [150] at 1.

II. DISCUSSION

Federal Rule of Civil Procedure 41 confers upon a district court the authority to dismiss an action sua sponte for failure to prosecute or for failure to comply with a court order. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988) (citing *Link v. Wabash R.R. Co.*, 70 U.S. 626, 630-31 (1962)). "This authority flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." *Boudwin v. Graystone Ins. Co.*, 756 F.2d 399, 401 (5th Cir. 1985). A court must be able to clear its calendar of cases that remain dormant because of the inaction or dilatoriness of the parties seeking relief in order to achieve the orderly and expeditious disposition of cases. *See Link*, 370 U.S. at 630-31.

Plaintiff filed his Complaint on November 16, 2015, over three years ago. Plaintiff's only remaining claims are against Defendants Progress Media Group Limited of Nova Scotia and Marilyn Smulders, who are in default. The Clerk entered a default on August 14, 2017, *see* Clerk's Entry of Default [150] at 1, but Plaintiff has never sought a default judgment. Based upon the facts and circumstances of this particular case, specifically the impending trial and pretrial conference dates, the Court will direct Plaintiff to either file a motion for default judgment as to Progress Media Group Limited of Nova Scotia and Marilyn Smulders on or before **January 4, 2019**, or dismiss his claims against those Defendants. Plaintiff is cautioned that, if he fails to file a motion for default judgment by **January 4, 2019**, the Court may dismiss Plaintiff's claims against Progress Media Group Limited of Nova Scotia and Marilyn Smulders without prejudice, without further notice to Plaintiff, pursuant to Federal Rule of Civil Procedure 41.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Plaintiff Douglas Handshoe shall either seek a default judgment as to remaining Defendants Progress Media Group Limited of Nova Scotia and Marilyn Smulders, or voluntarily dismiss his claims against them, on or before **January 4, 2019**. **Plaintiff is cautioned that, if fails to file a motion for default judgment by January 4, 2019, the Court may sua sponte dismiss Plaintiff's claims against Progress**

Media Group Limited of Nova Scotia and Marilyn Smulders without prejudice, and without further notice to Plaintiff.

SO ORDERED AND ADJUDGED, this the 20th day of December, 2018.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE